United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-2067

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

JEROME J. WELLS,
EDWARD A. SWEETSER,
FRANCES M. BARBEAU,
WALTER HOLMES, CONRAD
MOORE, DAVID N.
O'CONNELL, LAURA MAY
NOYES, RONALD MILES
MAGONI, SHIRLEY A.
MARSH, ROBERT LEE BOOTH,
RAYMOND CHESTER LUCAS, JR.,
Appellants

v.

JAMES E. MALLOY,
Commissioner of Motor
Vehicles of the State
of Vermont,
Appellee

On Appeal from the United States District Court

for the District of Vermont

BRIEF OF APPELLANTS

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I. ISSUE PRESENTED

Whether 28 U.S.C. § 1341 bars an injunction requiring the reinstatement of motor vehicle operators' licenses, when these licenses have been suspended for failure to pay a tax.

II. OPINION BELOW

The Opinion and Order of the United States District Court for the District of Vermont, per Albert W. Coffrin, District Judge, is unreported. It is reproduced in the Appendix.

III. STATEMENT OF THE CASE

Appellants (hereinafter referred to as "plaintiffs") are individuals whose Vermont motor vehicles operators' licenses have been suspended pursuant to 32 Vt. Stat. Ann. § 8909 for failure to pay the tax established by 32 Vt. Stat. Ann. § 8903, commonly referred to as the "motor vehicle purchase and use tax".

Alleging that he was financially unable to pay this tax, that he required his motor vehicle operator's license "to visit the doctor, shop for groceries, and for other necessities and amenities of daily life," that no other members of his family residing with him possessed a driver's license, and that he suffered "trememdous hardship, and irreparable and immediate harm from the continued suspension of his license," Plaintiff

Jerome Wells brought this action against the Commissioner of Motor Vehicles of the State of Vermont in the United States District Court for the District of Vermont, on behalf of himself and all persons similarly situated. Plaintiff Wells claimed that 32 Vt. Stat. Ann. § 8909 denied him equal protection of the laws in that it established a classification not reasonably related to the purpose of the motor vehicle licensing statutes. He requested that a three-judge district court be convened, that 32 Vt. Stat. Ann. § 8909 be declared unconstitutional, and that a preliminary and permanent injunction be issued requiring the restoration of his motor vehicle driver's license and the rights attendant thereto. Alleging civil rights and federal question jurisdiction, pursuant to 28 U.S.C. § 1343(3) and 1331(a), the action was brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983, and pursuant to the 14th Amendment to the United States Constitution.

The Commissioner of Motor Vehicles answered, denying that the challenged statute was unconstitutional, and alleging that the complaint failed to state a claim upon which relief could be granted, and that civil rights and federal question jurisdiction did not exist.

Pursuant to a stipulation between the parties, a temporary restraining order was issued by the court, prohibiting the continued suspension of Wells' driver's

license. Also pursuant to a stipulation, Wells withdrew his class action allegations, the Commissioner agreeing to apply any relief granted to Wells to all persons similarly situated. The other plaintiffs subsequently intervened in this action, and each obtained a temporary restraining order.

By Opinion and Order filed July 1, 1974, a single judge of the district court held that 28 U.S.C. § 1341 barred relief, dismissed the complaints of plaintiffs, and dissolved the temporary restraining orders. This appeal resulted.

IV. ARGUMENT

A. Introduction: The Vermont Statutory Setting

Although this appeal involves a narrow issue of construction of a federal statute - 28 U.S.C. § 1341 - it is helpful to put the issue in perspective by first considering the setting in which this issue arises: namely, the state statute which is challenged as unconstitutional and its place in the Vermont statutory scheme. All relevant Vermont Statutes are reproduced in Addendum A.

32 Vt. Stat. Ann. § 8903, read with 32 Vt. Stat. Ann. § 8907, imposes a tax on the purchase or use of a motor vehicle in the State of Vermont based, in general, upon the purchase price thereof, or, if acquired by gift or if the motor vehicle is being

brought into the state after use elsewhere, the actual retail value thereof. A monetary penalty is assessed if the tax is not timely paid. 32 Vt. Stat. Ann. § 8905. The Commissioner of Motor Vehicles is authorized to bring a civil action to collect the tax and any penalty, and to suspend the driver's license of any individual who does not pay the tax and penalty:

> If the tax due under subsections (a) and (b) of section 8903 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the state on this statute.

It is only that portion of this statute which permits the suspension of plaintiffs' drivers' licenses which is challenged in the case at bar.

It should be noted that it is the individual's driver's license, rather than his motor vehicle registration, which is suspended for nonpayment. Moreover, the suspension need not take place immediately upon non-payment but can take place years later.[1] A relatively long lapse of time is, in fact, the usual course of events. See Complaint of plaintiff Wells, paragraph I, alleging that he purchased the cars on which the tax was due several years prior to the suspension of his license. Appendix, page 5.

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[1] If the suspension was effective immediately upon non-payment, at least those individuals who had just purchased cars (although not those who brought them in to the state or received them as gifts) might be more likely to have sufficient funds to pay the tax.

Accordingly, the statute permits suspension of an individual's right to drive any motor vehicle - even a borrowed car for an errand - because the individual failed to pay a tax on automobile long ago purchased and disposed of.

A driver's license being such a crucial necessity in Vermont,[2] the suspension thereof is a relatively effective coercive measure. Accordingly, the Vermont legislature has not confined the suspension of drivers' licenses solely to coercion of payment of a purchase and use tax.[3] Suspension, for example, is the remedy "whenever any check issued [to the motor vehicle department] in payment of any fee or for any other purpose" is not honored. 23 Vt. Stat. Ann. § 110. Similarly, failure to pay a "poll tax" (which is a head tax assessed annually) results in suspension of one's driver's license. 23 Vt. Stat. Ann. § 604. This provision is itself under constitutional attack - see Aiken v. Malloy, 132 Vt. 200, 315 A.2d 488 (1974).

Accordingly, the suspension of motor vehicle operators' licenses challenged in the instant case is not a sole attribute of the Vermont purchase and

2 See McNamara v. Malloy, 337 F. Supp. 722, 735 n.7 (D. Vt. 1971): "Moreover, plaintiff Gable's very survivial is at stake since Vermont is famous for its long winters and deep snows, and the nearest place that he can purchase food and other necessities is at least three miles from his home."

3 Until relatively recently, a welfare recipient, or even a former welfare recipient who was no longer receiving welfare, could have his driver's license suspended for his status as a recipient. 32 Vt. Stat. Ann. § 673, repealed at No. 147, 1967.

use tax, but is a penalty[4] utilized by the Vermont legislature for a number of purposes.

B. 28 U.S.C. § 1341 DOES NOT APPLY BECAUSE THE PLAINTIFFS DO NOT SEEK TO ENJOIN THE COLLECTION OF THE VERMONT PURCHASE -AND USE TAX.

1. 28 U.S.C. § 1341 and its legislative history.

28 U.S.C. § 1341 provides:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

This statute is inapplicable to the case at bar, because plaintiff's are not seeking to enjoin the collection of the Vermont purchase and use tax. Rather, the plaintiffs seek an injunction requiring re-instatement of their drivers' licenses, and declaratory relief with respect thereto. If the district court were to grant plaintiffs' request for relief, Vermont could still assess and collect the tax, and any monetary penalty, by civil suit, as authorized by 32 Vt. Stat. Ann. § 8909,

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4 The Vermont Supreme Court considers license suspension a 'penalty", at least in the poll-tax setting: "[T]he legislature has provided the operator's license suspension as a penalty for non-payment as a weapon in the arsenal of the town tax collector to collect that tax." Aiken v. Malloy, 132 Vt. 200, 206, 315 A.2d 488 (1974).

Section 1341 prevents a federal court from enjoining "the assessment, levy or collection' of a tax. This language is admittedly ambiguous and inconclusive as to the issue raised in this action.[5] Although a semantic analysis of section 1341 will not determine whether or not the Congress intended to prohibit scrutiny of a penalty attendant to tax non-payment, it should at least be noted that section 1341, taken as a whole, seems to prohibit only an attack on the validity of the tax itself.[6] It is likely that the language of section 1341 was simply designed

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5 The language of 1341 does not prohibit a declaratory judgment. The Supreme Court held in Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943), that the same equitable principles which gave rise to the statute require similar judicial restraint when a declaratory judgment is requested, but the court did not hold that section 1341 itself prohibited a declaratory judgment. Plaintiffs' requests for declaratory judgment, then, are thus governed by those "deeply rooted and long settled principles of equity" against interference with the collection of a state tax, rather than the prohibition of section 1341 itself. Samuels v. Mackell, 401 U.S. 66, 72 (1971). Thus the considerations underlying a decision as to plaintiffs' request for injunctive relief are similar to the considerations underlying a determination regarding declaratory relief. The line could be drawn narrowly enough, however, so that declaratory relief might be permitted under equitable principles, but injunctive relief denied pursuant to the statute.

6 If one were to read the statute literally, the language would not bar the instant case. The statute literally refers to the collection of a tax, not a penalty which might aid in the collection (nor in fact, even one means of collection, when others are available). Such a semantic analysis however, should be supplanted by an analysis based on what the Congress desired to accomplish by enacting the statute.

to prohibit the standard form which an injunction against an unconstitutional tax might be expected to take; i.e., an injunction against its assessment, levy or collection.

Despite the ambiguous language of the statute, when examined with the searchlight of its legislative history, it becomes clear that it is only such an attack on a tax itself which is prohibited by section 1341.

Prior to the adoption of a statutory prohibition, the Supreme Court had enunciated the principle that:

> The mere illegality or unconstitutionality of a state or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate and complete, the aggrieved party is left to that remedy in the state courts, from which the cause may be brought to this Court for review if any federal question be involved.

Matthews v. Rodgers, 284 U.S. 521 (1932). Nevertheless, the Congress became concerned with the continuing practice of the federal district courts in entertaining suits challenging the constitutionality of specific taxes, rather than requiring the taxpayer to pay the tax under protest, and sue for a refund in state court.

The sponsor of the Act of August 21, 1937, presently 28 U.S.C. § 1341, illustrated the problem with reference to his own state.

> The statutes of Washington . . ., takes away from the State courts the right to enjoin the collection of State and county taxes, unless the tax law is invalid or the property is exempt from taxation, and provides that taxpayers can contest their taxes only in

> refund actions after payment under protest. This law makes it possible for the State and its various agencies to survive while long drawn out tax litigation is in progress. But if those to whom the Federal courts are open may secure injunctive relief against offensive taxes, we have presented the highly unfair situation of the ordinary citizen being required to pay first and then litigate, while those privileged to sue in the Federal courts need pay only what they choose and withhold the balance during years of litigation.

Congressional Record, 75th Cong., 1st Sess., at 1416 (1937) (reproduced in Addendum B). The sponsoring Senator explained at length how, in his own state, several railroads had sued in federal court to restrain a portion of the county taxes levied upon the companys' operating property, resulting in lengthy suits following which "the counties were so hard-pressed for money by reason of these railroads withholding such a large portion of their taxes, that the railroads . . . were in a position to dictate the terms of settlement . ." Id.

The committee reports also focused on this problem:

> The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy.

House Rep. 1503, at 2; Sen. Rep. 1035, at 2, 75 th Cong., 1st Sess. (1937) (set forth in Addendum C). In Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 301 (1943), the Supreme Court described the purpose of the Act in similar terms:

> The Act of August 21, 1937, was predicated upon the desirability of freeing, from interference by the federal courts, state procedures which authorize litigation challenging a tax only after the tax has been paid.

See also Hargrave v. McKinney, 413 F.2d 320 (5th Cir. 1969). Thus the statute is designed to prevent circumvention of "procedures for mass assessment and collection of state taxes and adjudication of taxpayers' disputes with tax officials," particularly since questions of state tax law are often involved. Perez v. Ledesma, 401 U.S. 82, 127 n.17 (1971) (Brennan, J. concurring and dissenting).

Such considerations are manifestly inapplicable to the instant case. Plaintiffs are not attempting to circumvent any state procedures for the collection of taxes and adjudication of disputes. They are not in a position to pay the tax under protest and then sue for a refund - first, because they do not have the money (their very inability to pay being the basis of this suit),[7] and, second, because they do not challenge

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[7]Thus the state's economy would not be disrupted by an injunction, since the appellants allege that they are unable to pay the tax whether or not the court grants an injunction against the continued suspension of their drivers' licenses.

the validity of the tax or dispute that the tax is owing. To be sure, they could bring a similar action in state court,[8] but - if the congressional purpose underlying section 1341 does not require intervention - plaintiffs should be free to bring their claim in federal court pursuant to the civil rights statutes:

> The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial."

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[8] Such a state-court suit would be based purely on the federal constitution, no state-provided remedy being available. It may be that such a suit is not the type of remedy required by the statute. Language in a number of cases indicates that the remedy must be one dictated by state law for correction of error, rather than a federal supremacy-clause challenge. E.g., Hillsborough Township v. Cromwell, 326 U.S. 620, 628-9 (1946): "And it is not clear that today respondent has open any adequate remedy in the New Jersey courts for challenging the assessment on local law grounds." (emphasis added). See 1A Moore's Federal Practice ¶ 0.027, at 2284-5 (emphasis added):

> But if the federal action presents a federal constitutional question that hinges upon an unsettled question of State law, then the doctrine of Railroad Commission of Texas v. Pullman Co., applies so that federal action should be held in abeyance pending determination of the unsettled local question that may thereby remove the federal constitutional issue. But if it is uncertain whether there is an available state remedy whereby the local issues may be resolved or where an authorative interpretation of the local law has been given in another case the federal action may proceed without remitting the parties to state proceedings for determination of the local issues.

Mitchum v. Foster, 407 U.S. 225, 242 (1972).

It might be noted in this connection that the legislative history of section 1341 makes reference to diversity jurisdiction as the evil aimed at; i.e., corporations litigating totally state-created issues in federal court; reference to civil rights jurisdiction is conspicuous by its absence.[9]

Considering the strong congressional purpose behind 28 U.S.C. § 1983, as explicated in Mitchum, supra, furtherance of congressional intent, as well as ordinary fairness and justice, demands that plaintiffs with valid civil rights claims not be barred from the federal forum unless section 1341 clearly so requires.[10] But, as the above analysis of the legislative history demonstrates, the Congress did not intend to withhold from federal judicial scrutiny a collateral penalty such as that involved here.

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9 See Perez v. Ledesma, supra, 401 U.S. at 127 n.17, stating as a rationale for section 1341 that "[p]roperty rights must yield provisionally to governmental need." (emphasis added). A driver's license, on the other hand, should be characterized as a personal right, rather than as a property right. McNamara v. Malloy, 337 F. Supp. 732, 734 (D. Vt. 1971)

10 In Hickmann v. Wujick, 488 F.2d 875 (2d Cir. 1973), and in American Commuters Assn., Inc., v. Levitt, 405 F.2d 1148 (2d Cir. 1969), this court found that attempts to bypass state tax procedures, clearly within section 1341 were barred by that section, despite the plaintiffs' reliance on civil rights jurisdiction. For the reasons set forth in this brief, these cases are inapposite to the case at bar.

If the federal courts cannot inquire into the constitutionality of the suspension of drivers' licenses for failure to pay a purchase and use tax, they cannot inquire into such suspension for failure to pay an income tax, nor can they inquire into "body arrest" for failure to pay a tax nor the refusal to permit a voter to register unless all taxes were paid. But see Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966).

The Supreme Court held in Mitchum, supra, that:

> This legislative history[of 28 U.S.C. § 1983] makes evident that Congress clearly conceived that it was altering the relationship between the States and the Nation with respect to the protection of federally created rights; it was concerned that state instrumentalities could not protect those rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts.

407 U.S. at 242. An exception to a remedy with such an important congressional purpose should not be found for a penalty collateral to a taxing statute - a situation which the 1937 Congress never contemplated, and for which it did not intend to legislate!

2. Case Law

There have been a very limited number of cases raising the issue of the applicability of 28 U.S.C. § 1341 to a collateral penalty provision triggered

by the failure to pay a tax. Of particular importance is Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966), declaring unconstitutional Virginia's poll tax as a prerequisite for the right to vote. Harper is directly on point, and apparently neither the Supreme Court nor the lower court it reverses - see 240 F. Supp. 270 (E.D. Va. 1964) - thought 28 U.S.C. § 1341 a sufficient bar to even mention it.

In Allen v. Regents, 304 U.S. 439 (1938), the Supreme Court considered a claim by the Regents of the University System of Georgia that a federal tax on football games was unconstitutional. The issue arose as to whether the Regents were being assessed a tax or were paying a penalty for failure to collect a tax from football patrons. The Court was faced with a federal statute that required that: "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." The Court found that 'the assessment was not of a tax payable by respondent but of a penalty for failure to collect it from another. " 304 U.S. at 449. Accordingly, the court found this was an "exceptional case" and that the statute did not "oust the jurisdiction." Id. The suspension of a driver's license for failure to pay a tax certainly seems to be less connected with the collection process than does a penalty for failure to collect the tax. Plaintiffs submit that

Allen is a fortiori in support of their arguments herein.

In Birch v. McColgan, 39 F. Supp. 358 (S.D. Calif. 1941), the plaintiff sought an injunction against a pending state action for the collection of the California Bank and Corporation Franchise Tax, on the grounds that the tax was unconstitutional as applied to the plaintiff. The plaintiff also challenged on due process grounds the suspension of its right to do business in the state, which resulted from its failure to pay the tax. Although the court refused to enjoin the collection of the tax, it did enjoin the suspension of the plaintiff's corporate powers, holding that the predecessor of 28 U.S.C. § 1341 did not bar an injunction because:

> [T]his is not merely an action to enjoin the assessment and collection of taxes. It is also an action to enjoin the wrongful acts which, according to the complaint, the state officers are committing and threatening to commit . . .

Id. at 365. It is submitted that Birch is quite closely on point to the present case.

In Director of Revenue v. United States, 392 F.2d 307 (10th Cir. 1968), the lower court had held that a Small Business Administration chattel mortgage had priority over a Colorado tax lien, preventing Colorado from enforcing its lien against the property in question. On appeal, Colorado argued that the lower court's action was in violation of Section 1341

in that it had enjoined the collection of a state tax, but the Tenth Circuit held Section 1341 inapplicable, stating:

> [N]o one seeks to suspend the collection of state taxes. Indeed, it seems to be conceded that the taxes are valid, due and owing, and unpaid. The SBA seeks only to limit the source from which the taxes may be collected. Id. at 311.

Thus, where the validity of the tax itself was not questioned, section 1341 was held not to prevent an injunction against a particular means of its collection.

Director of Revenue was discussed in Non-Resident Taxpayers Assn. v. Philadelphia, (I) , 341 F. Supp. 1135 (D.N.J. 1971), aff'd, 406 U.S. 951 (1972), and in Non-Resident Taxpayers Assn. v. Philadelphia (II), 341 F. Supp. 1139 (D.N.J. 1971), aff'd, 406 U.S. 951 (1972). The plaintiffs sought an injunction against Philadelphia's wage and net profits tax as applied to non-residents of the City. The plaintiffs attempted to analogize the case to Director of Revenue, arguing that they were only asking the court to limit the source from which the tax could be collected. The court held that Section 1341 applied, and it rejected the plaintiff's analogy, finding that the plaintiffs were attempting to exempt themselves permanently from their tax liability and, in effect, challenging the validity of the tax itself. The court noted further that "no claim is made regarding a denial of due process in the method of assessing or collecting the tax,"

implying that it would have jurisdiction to enjoin a particular unconstitutional means of collection. Id. at 1143.

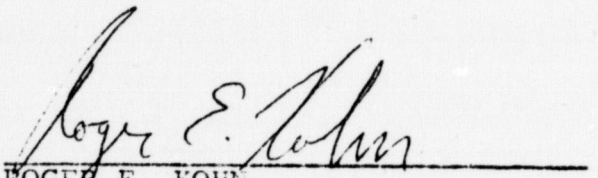
There are also a number of cases holding that a tax with punitive qualifies may be enjoined. E.g., Regal Drug Co. v. Wardell, 260 U.S. 386; Denton v. Carrollton, 235 F.2d 481, 485 (5th Cir. 1956). Clearly the statute challenged in the instant case has a "punitive" purpose, in the sense that term is used in these cases. For other cases lending some support to plaintiffs' position in this appeal see, e.g., National Foundry Co. v. Director of Internal Revenue, 229 F.2d 149, 150-51(2d Cir. 1956) (general prohibition against injunction of federal tax collection "subject to exception where the tax is clearly illegal or other special circumstances of an unusual character make an appeal to equitable remedies appropriate"; D.C. Transit System, Inc. v. Pearson, 149 F. Supp. 18 (D.D.C. 1957); Baker v. Strode, 348 F. Supp. 1257, 1263 (D. Ky. 1971) ("Plaintiffs herein do not fall with the proscription of 28 U.S.C.A. § 1341, inasmuch as they do not seek to enjoin, suspend, or restrain the assessment, levy or collection of any tax; they seek rather to have declared unconstitutional a statutory limitation on the tax rates which Kentucky's School Boards may levy in their school districts."); Parker v. Mandell, 344 F. Supp. 1068 (D. Md. 1972).

In summary, the statutory language of section 1341 is ambiguous (although an argument in plaintiffs' favor can be made therefrom), the legislative history strongly indicates that the present fact situation was not within the intended scope of section 1341, and there is case support for the proposition that section 1341 does not apply to the instant case- including the Supreme Court's decision in Harper.

V. CONCLUSION

28 U.S.C. § 1341 prohibits an injunction against the "collection" of a tax. The legislative history of this statute clearly demonstrates that the Congress was concerned with the by-passing in federal court of state procedures for challenging the validity of tax after payment under protest. The evils the Congress desired to correct by enacting section 1341 are not presented in the present case. Plaintiffs desire only to have their driver's licenses reinstated, not to enjoin the collection of the Vermont purchase and use tax. Granting them the relief they desire is necessary to effectuate the important considerations underlying civil rights jurisdiction.

Respectfully submitted,



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ADDENDUM "A"

§ 8901. Purpose

This is an act to impose a purchase and use tax on motor vehicles in addition to any other tax or registration fees. The purpose of this chapter is to thereby improve and maintain the state and interstate highway systems, to pay the principal and interest on bonds issued for the improvement and maintenance of those systems and to pay the cost of administering this chapter. The administration of this chapter is vested in the commissioner of motor vehicles and his authorized representatives. The commissioner may prescribe and publish regulations to carry into effect the provisions of this chapter, which regulations, when reasonably designed to carry out the intent of this chapter, shall have the same force as if enacted herein.

§ 8902. Definitions

Unless otherwise expressly provided, the words and phrases used in this chapter shall be construed to mean:

(1) "Commissioner"-the commissioner of motor vehicles.

(2) "Resident"-resident shall include all legal residents of this state and in addition thereto any person who accepts employment or engages in a trade, profession or occupation in this state for a period of at least six months. Also in addition thereto any foreign partnership, firm, association or corporation doing business in this state shall be deemed to be a resident as to all vehicles owned or leased and ordinarily used by it in connection with its place of business in this state. Resident shall not include any person, firm or corporation not required to register motor vehicles by reason of any reciprocity provision with any other state.

(3) "Purchase or purchasing, sale or selling"-any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of a motor vehicle for a consideration, including transactions whereby the possession of the property is transferred but the seller retains the title as security for the payment of the purchase price.

(4) "Purchase price"-the gross consideration, exclusive of the tax hereby imposed, which is to be paid for the motor vehicle, expressed in terms of United States currency as of the time of the sale, and shall include the cash consideration, if any, plus the value of any services or property given or to be given, or both, in exchange for the motor vehicle.

(5) "Taxable cost"-the purchase price of a motor vehicle purchased, or as determined under section 8907 of this title if acquired in any other manner, less

(A) the value allowed by the seller on any motor vehicle accepted by him as part of the consideration of the motor vehicle provided the motor vehicle accepted by the seller is owned and previously or currently registered by the purchaser, with no change of ownership since registration, except for motor vehicles for which registration is not

required under the provisions of Title 23 or motor vehicles received under the provision of section 8911(8) of this title;

(B) the amount received from the sale of a motor vehicle then registered in his name, the amount not to exceed the average book value of the same make, type, model and year of manufacture as shown in the official used car guide, National Automobile Dealers Association (New England edition), provided such sale occurs within three months of the taxable purchase. Such amount shall be reported on forms supplied by the commissioner of motor vehicles;

(C) the amount actually paid to the purchaser within three months prior to the taxable purchase by any insurer under a contract of collision, comprehensive or similar insurance with respect to a motor vehicle owned by him provided that one of these events occur;

(i) the motor vehicle with respect to which such payment is made by the insurer is accepted by seller as a trade-in on the purchased motor vehicle before the repair of the damage giving rise to insurer's payment, or

(ii) the motor vehicle with respect to which such payment is made to the insurer is treated as a total loss and is sold for dismantling;

(D) a purchaser shall be entitled to a partial or complete refund of taxes paid under this chapter if an insurer makes a payment to him under contract of collision, comprehensive or similar insurance after he has paid the tax imposed by this chapter if such payment by the insurer is either:

(i) on account of damages to a motor vehicle which was accepted by seller as a trade-in on the purchased vehicle before repairs of the damage giving rise to the insurer's payment, or

(ii) on account of damages for the total destruction of a vehicle arising from an accident which occurred within three months prior to the taxable purchase.

(6) "Motor vehicle" shall have the same definition as in subdivision (15) of section 4 of Title 23, and shall not include trailer coaches as defined in subdivision (32) of section 4 of Title 23.

(7) "Person"-any individual, firm, partnership, joint venture, association, social club, fraternal organization, estate, trust, fiduciary, receiver, trustee or corporation.

(8) "Title" shall include possession under a sale or purchase which reserves title as security to the seller.

§ 8903. Tax imposed

(a) There is hereby imposed upon the purchase in Vermont of a motor vehicle by a resident a tax at the time of such purchase, payable as hereinafter provided. The amount of the tax shall be four per cent of the taxable cost of the motor vehicle or $300.00 for each motor vehicle, whichever is smaller.

(b) There is hereby imposed upon the use within this state a tax of four per cent of the taxable cost of a motor vehicle, or $300.00 for each motor vehicle, whichever is smaller, by a person at the time of first registering or transferring a registration to such motor vehicle payable as hereinafter provided, except no use tax shall be payable hereunder if the tax imposed by subsection (a) above has been paid.

(c) The Vermont registration or transfer of Vermont registration of a motor vehicle shall be conclusive evidence that the purchase and use tax applies as provided in section 8911 of this title.

§ 8904. Completion of form

(a) Every person selling a motor vehicle in Vermont shall at the time of selling a motor vehicle compute for the purchaser the tax imposed by subsection (a) of section 8903 of this title and complete in its entirety the tax form prescribed and furnished by the commissioner.

(b) When the seller of a motor vehicle fails to fill out the tax form as required in paragraph (a) he shall be subject to the penalties under section 8909 of this title or if he is a registered dealer, the commissioner may suspend the dealer registration. Such suspension shall be for a reasonable time and shall not exceed ten days for each offense and shall be made only after a finding that the failure of such dealer is wilful and intentional and not the result of inadvertence.

§ 8905. Collection of tax

(a) Every purchaser of a motor vehicle subject to a tax under subsection (a) of section 8903 of this title shall forward such tax form to the commissioner, together with the amount of tax due, within thirty days of the time of first registering or transferring a registration to such motor vehicle.

(b) Every person subject to a use tax under subsection (b) of section 8903 of this title shall forward such tax form and the tax due to the commissioner with the registration application or transfer, as the case may be, and fee at the time of first registering or transferring a registration to such motor vehicle as a condition precedent to registration thereof.

(c) If the tax due under subsections (a) and (b) of this section is not paid as provided, a penalty of an additional one per cent of taxable cost or $ 150.00 whichever is smaller.

§ 8906. Tax form contents

Such tax form shall require information as to the purchase price of the motor vehicle, the value of any motor vehicle accepted in trade together with its make, type, serial or identification number and year of manufacture and the make, type, serial or identification number and year of manufacture of the motor vehicle purchased.

§ 8907. Commissioner, computation of taxable costs

The commissioner may investigate the taxable cost of any motor vehicle transferred subject to the provisions of this chapter. If the motor vehicle is not acquired by purchase in Vermont or is received for an amount which does not represent actual value, or if no tax form is filed or it appears to the commissioner that a tax form contains fraudulent or incorrect information, he may, in his discretion, fix the value of said motor vehicle at the average book value of the same make, type, model and year of manufacture as designated by the manufacturer as shown in the Official Used Car Guide, National Automobile Dealers Association (New England edition) or any comparable publication, compute and assess the tax due thereon, and notify the purchaser thereof forthwith by certified mail, and said purchaser shall remit the same within fifteen days thereafter.

§ 8908. Regulations

Notwithstanding any other provision of law, the commissioner may from time to time make regulations to provide that "taxable cost" shall not reflect a diminution for trade-in arising from a purchase of a motor vehicle in a state which does not allow a deduction for trade-in in the computation of the "taxable cost" or similar tax base in the computation of taxes imposed by a motor vehicle, sales and use tax in that state.

§ 8909. Enforcement

If the tax due under subsections (a) and (b) of section 8903 of this title is not paid as hereinbefore provided the commissioner shall suspend such purchaser's right to operate a motor vehicle within the state of Vermont until such tax is paid, and such tax may be recovered with costs in an action brought in the name of the state on this statute.

§ 8910. Penalties

Any person who wilfully makes a false statement on such tax form prescribed and furnished by the commissioner or any person who wilfully attempts to evade the tax herein imposed shall be fined not more that $500.00.

§ 8911. Exceptions

The tax imposed by this chapter shall not apply to:

(1) motor vehicles owned or registered by any state or province or any political subdivision thereof;

(2) motor vehicles owned and operated by the United States of America;

(3) motor vheicles owned and registered by religious or charitable institutions or volunteer fire companies;

(4) motor vehicles owned and operated by a dealer and registered and operated under the provisions of sections 451-468 inclusive of Title 23;

(5) nonregistered motor vehicles other than tow or repairman vehicles;

(6) pleasure cars, the owners of which were not reisdents of this state at the time of purchase and had registered and used the vehicle for at least thirty days in a state or province other than Vermont;

(7) motor vehicles, title to which on the effective date of this chapter is in the owner seeking registration thereof;

(8) motor vehciles transferred to the spouse, mother father, or child of the donor provided such motor vehicle has been registered in this state in the name of the donor;

(9) pleasure cars acquired outside the state by a resident of Vermont on which a state sales or use tax has been paid by the person applying for a registration in Vermont, providing that the state or province collecting such tax would grant the same pro-rata credit for Vermont tax paid under similar circumstances. If the tax paid in another state is less that the Vermont tax the tax due shall be the difference;

(10) motor vehicles registered in Vermont by the transferor and transferred between that individual and a business entity controlled by him, if the transfer is exempt under section 351 of the United States Internal Revenue Code in effect July 1, 1966;

(11) motor vehilces owned or purchased in another state by a member of the armed forces on full time active duty or his spouse upon which a purchase, use or sales tax has been paid in another state, except that, if that tax is less than the tax payable in this state but for this subdivision, the tax applies in the amount of the difference;

(12) motor vehicles owned and operated by physically handicapped persons for whom the vehicle's controls have been altered to enable such persons to drive. This exception shall apply only when such handicapped person has been certified exempt from the tax by the commissioner of motor vehicles under the provisions of section 8901 of this title.

§ 8912. Allocation of funds

The taxes collected under this chapter shall be paid into and accounted for in the highway fund.

§ 8913. Fraudulent collection of tax

No person except the commissioner and his authorized representatives may collect or accept payment of any tax imposed by this chapter. Any person so doing shall be presumed to have the intent to convert it to his own use. Any unauthorized person who wilfully collects or accepts payment of such a tax, upon conviction for a first offense

shall be fined not more than $200.00 or imprisoned for not more than ninety days, or both. Upon each subsequent conviction he shall be fined not more than $500.00 or imprisoned for not more than one year, or both.

§ 8914. Refund

Any overpayment of such tax as determined by the commissioner shall be refunded.

§ 8915. Reciprocal agreements

The commissioner may enter into reciprocal agreements with appropriate officials of any other state or province under which he may waive all or any part of the tax imposed by this chapter upon a similar waiver by such state or province.

establishing and maintaining adequate public health services in the prevention and control of diseases in the areas recently stricken by floods under regulations prescribed by the Surgeon General of the Public Health Service, and in addition to permit the employment of temporary personnel to replace regular Public Health Service personnel detailed to those areas, to reimburse the Public Health Service for expenditures from its appropriations, and to replace supplies and equipment furnished from stocks.

The recent disastrous winter floods have affected a total of 177 counties in 11 different States. The population of these flood-stricken areas is 7,746,984. Preliminary reports show that the homes of 1,205,265 persons were flooded, 740,229 had to be cared for by the Red Cross and other agencies, 23,783 homes were seriously or completely destroyed, and 117 public water supplies servicing 1,617,000 persons were put out of operation. Floods occurring in winter precipitate particularly menacing health and sanitation problems.

The immediate emergency of health and sanitation in the first 30 days has been met by State and local agencies in cooperation with the United States Public Health Service. An allotment of $245,000 made to the latter service from emergency funds will be exhausted by March 1.

The committee was advised by Surgeon General Parran that conditions require prompt and continued application of modern health protective measures if costly illnesses and premature deaths are to be averted. He said: "I have no hesitation in saying that the cost of prevention will be far less than the consequences of neglect." The purpose of the joint resolution is to care for the rehabilitation situation that now presents itself in these areas.

Many of the communities suffering from the flood will undoubtedly require outside assistance other than that which State and local sources can furnish. Some communities will be without resources for health or other purposes. The Surgeon General states it will be advisable to set up a complete health service to operate during this rehabilitation period in some of the areas and in others it will be necessary to supplement existing services that are reasonably sufficient in normal times but inadequate to handle emergency conditions.

The proposed plan under the joint resolution contemplates an average expenditure of $6,000 per county for each of the 177 counties during the next 6 months. It is the opinion of the Surgeon General that this aid should be provided through grants by the Federal Government to the flooded States on the basis of relative needs under the general plan in effect as to regular grants under the provisions of the Social Security Act. The grant method is recommended by the Surgeon General in the belief that it will simplify administration of health and sanitation activities. Expenditure of funds would be through State and local organizations under Federal supervision and regulation. If the assistance were to be undertaken by direct employment of personnel by the Federal agency there would be the complication of two agencies, Federal and State or local, in the same areas striving for the same ends in varying degrees, but each under different operating conditions.

A clause is included in this joint resolution to make it clear that allocations of these funds for the purposes of the joint resolution shall be in addition to those which may otherwise be made under the Emergency Relief Act of 1936, as supplemented, and shall not be considered as excluding other allocations which may lawfully be made to the Public Health Service under the terms of that act.

Mr. ROBINSON. Mr. President, I merely desire to add to what has been said that this is an emergency appropriation. It is essential that the funds carried in the joint resolution be made available as soon as practicable.

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H. J. Res. 229) was ordered to a third reading, read the third time, and passed.

The PRESIDING OFFICER. Without objection, Senate Joint Resolution 79 will be indefinitely postponed.

AUTHORITY TO SIGN HOUSE JOINT RESOLUTION 229

Mr. ROBINSON subsequently said: Mr. President, I ask unanimous consent that during the recess or adjournment of the Senate to follow today's session, the Vice President be authorized to sign House Joint Resolution 229.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

ORDER OF BUSINESS

Mr. ROBINSON. Mr. President, a few moments ago I stated that, in all probability, an opportunity for consideration of bills on the calendar would be afforded on Monday. It is recalled that Monday will be a holiday in commemoration of the birth of President George Washington, and on second thought I desire to withdraw the announcement I made, and to say that unless something of an emergency character shall be brought before the Senate, it is not expected that business will be transacted following the reading of the Farewell Address by the Senator from Massachusetts [Mr. LODGE]. In the early future, at the next session following the meeting on Monday, the opportunity will be afforded to consider bills on the calendar.

Mr. VANDENBERG. Mr. President, will the Senator yield?

Mr. ROBINSON. Certainly.

Mr. VANDENBERG. Is the Senator able to say whether the reciprocal trade treaty bill will probably come before the Senate Tuesday?

Mr. ROBINSON. I understood from the Senator from Mississippi [Mr. HARRISON], who is in charge of the bill, that he expects to bring it forward in the very early future. Probably he will ask for its consideration next Tuesday.

COLLECTION OF STATE TAXES—JURISDICTION OF FEDERAL DISTRICT COURTS

Mr. BONE. Mr. President, on the 17th of the present month I introduced a very short bill, to amend section 24 of the Judicial Code. The proposed amendment would affect the jurisdiction of district courts of the United States over suits relating to the collection of State taxes.

In view of the fact that the jurisdiction of the lower Federal courts has been under discussion during the last few days, I think this a proper time to bring the bill forward, and I hope that the Committee on the Judiciary of the Senate will give it the attention I think it merits.

I introduced the bill primarily because it affects my own State, but I dare say that almost to the degree it would affect my State, it would affect the States of other Senators. The purpose of the bill is to take away the jurisdiction of Federal district courts to enjoin, suspend, or restrain the assessment or collection of any tax imposed by or pursuant to the laws of any State. Provision is made that the bill is not to affect suits pending at the time of its enactment.

I digress to call attention to the fact that even if this bill shall be enacted it will not affect the litigation now under way in the courts in my State, or in the courts in any other State.

At this point I ask unanimous consent that the bill to which I refer, Senate bill 1551, be inserted in my remarks, so that those who read them may know the nature of the bill.

The PRESIDING OFFICER. Is there objection?

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

A bill to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes

Be it enacted, etc., That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

SEC. 2. The provisions of this act shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this act had not been passed.

EXAMPLES OF SIMILAR LEGISLATION

Mr. BONE. Mr. President, the proposed legislation is not novel in character.

Section 3224 of the Revised Statutes provides that "No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." This provision applies only to taxes levied by the Federal Government. State Railroad Tax Cases, 92 U. S. 575.

An act of March 4, 1927, provides that "No suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Puerto Rico shall be maintained in the district court of the United States for Puerto Rico."

The Johnson Act of May 14, 1934, after which this bill is modeled, provides that—

no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the

ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State.

Most of the arguments which were used in support of the Johnson Act and brought about its enactment apply in like manner to the legislation now proposed.

NECESSITY FOR THE LEGISLATION

The existing practice of the Federal courts to entertain tax-injunction suits make it possible for foreign corporations to withhold from a State and its governmental subdivisions taxes in such vast amounts and for such long periods as to disrupt State and county finances, and thus make it possible for such corporations to determine for themselves the amount of taxes they will pay.

While this situation exists in many of the States, the detailed information presented herewith relates only to the State of Washington.

Mr. President, at this point I desire to read brief excerpts from a letter to me from an assistant attorney general of the State of Washington dealing with this particular matter and referring to a very important piece of litigation in my own State at this time. The writer of this letter is Mr. R. G. Sharpe, assistant attorney general of my State, who says:

(1) The statutes of Washington (ch. 61, Laws of 1931), takes away from the State courts the right to enjoin the collection of State and county taxes, unless the tax law is invalid or the property is exempt from taxation, and provides that taxpayers can contest their taxes only in refund actions after payment under protest. This law makes it possible for the State and its various agencies to survive while long drawn out tax litigation is in progress. But if those to whom the Federal courts are open may secure injunctive relief against offensive taxes, we have presented the highly unfair situation of the ordinary citizen being required to pay first and then litigate, while those privileged to sue in the Federal courts need pay only what they choose and withhold the balance during years of litigation.

Pending and past tax injunction suits maintained in the Federal courts of this State serve to emphasize the point last urged. Thus, in December 1936 the Northern Pacific Railway Co. instituted in the Federal District Court at Spokane a suit to restrain a portion of the taxes levied upon that company's operating property located in 23 counties of this State for the years 1935 and 1936. The tax for 1935 is $1,401,549, of which the company has refused to pay and seeks to restrain the collection of $613,087. The tax for 1936 is $1,343,460, of which the company has refused to pay and seeks to restrain the collection of $856,495. Thus, for these 2 years the company is seeking to enjoin the collection of $1,474,582, or more than half of its taxes. From the history of past similar litigation it is quite apparent that the company will refuse to pay any of these unpaid taxes until the end of the litigation, several years hence, and will likewise prosecute similar actions against the counties for the taxes for future years and will likewise withhold large proportions of its taxes for these later years. And it is likewise more than likely that other roads will institute similar suits and follow the same practice.

In this, history will but repeat itself, as shown by the records of the same Federal district court in similar suits begun 10 years ago. In the fall of 1926 and the beginning of 1927 the Northern Pacific and the Chicago, Milwaukee, St. Paul & Pacific Railroad (the "Milwaukee") instituted suits in the Federal court at Spokane to restrain the collection of their taxes, the N. P. for its 1925 and 1926 taxes, and the Milwaukee for its 1926 and 1927 taxes. Each year thereafter similar suits were instituted by the two companies, so that by the time decrees in the original suits were entered by the district court in September 1932 suits involving the N. P. taxes for 1926 to 1931 were pending, and suits involving the Milwaukee taxes for 1926 to 1931 were likewise pending. Later suits involving the 1932 N. P. taxes and the 1932 and 1933 Milwaukee taxes were instituted.

The 1925 and 1926 N. P. suit and the 1926 and 1927 Milwaukee suit took a year and a half to try, the trial being had before a special master, and, although every effort was made by the county defendants to press the suits to judgment, decrees were not entered in those suits, as I have said, until September 1932. By this time the counties were so hard-pressed for money by reason of these railroads withholding such a large proportion of their taxes, that the railroads, the N. P. and the S. P. & S. (another litigating road), were in a position to dictate the terms of settlement, and as a result the counties threw up their hands and by agreed decrees entered February 20, 1933, consented to a settlement of the N. P. suits, which settlements resulted in the counties receiving substantially $1,500,000 less in taxes for the years 1927 to 1932 than they would have received under the formula of valuation announced by Judge Webster in his decision of the 1925 and 1926 case. (See *N. P. Ry.* v. *Adams County*, 1 Fed. Supp. 163.)

The Milwaukee's offer of settlement was too ridiculous to be stomached by the counties, even in their distressed financial condition, and an appeal was taken to the Circuit Court of Appeals, resulting in a reversal of the 1926 and 1927 Milwaukee tax decree, in July 1934. (See *C. M. St. P. & P. R. Co.* v. *Adams Co.*, 72 Fed. (2d) 816.) The tax commission thereupon made assessments of the Milwaukee property for the years 1926 to 1932, and on November 30, 1934, the Milwaukee elected to pay the taxes as so reassessed, on the 10-year installment plan. In neither the N. P. nor the Milwaukee settlement was any interest allowed on the taxes wrongfully withheld for all these years.

I am enclosing herewith a few rather startling figures with respect to these suits. In so doing, however, I have ignored the N. P. suit relating to the 1925 and 1926 taxes for the reason that the N. P., in March 1927, paid substantially all of its taxes for those 2 years, pursuant to stipulation that a judgment of refund might be entered for the excess taxes found, if any.

May I here restate a few of the figures shown by this statement:

Total taxes assessed against N. P., 1927 to 1931, and against Milwaukee, 1926 to 1932		$22,349,469
Total of said taxes paid by said companies prior to suit		12,893,713
Total of said taxes canceled as result of Milwaukee reassessment and settlements to which counties were forced to accede	$3,576,242	
Total of said taxes wrongfully withheld and paid to counties (without interest) by N. P. on Feb. 20, 1933, and by Milwaukee on Nov. 30, 1934	5,879,514	
		9,455,756
Interest to which counties would have been entitled at legal rate of 6 percent on said taxes wrongfully withheld for varying periods, some as long as 7½ years		1,120,774
Interest to which counties would have been entitled on said taxes wrongfully withheld as penalty for nonpayment of delinquent taxes		1,867,956

The suit of the Northern Pacific Railway Co. now pending in Washington illustrates to indicate the methods used by these powerful corporations to harass the State and local governments. The attorneys for the plaintiff very astutely did not make the State or the State tax commission parties to the action, but sued the 23 counties of the State in which the railway has property collectively, the purpose being to compel the defense of the action to be handled by 23 local prosecuting attorneys who may not be familiar with the processes by which utilities are valued and assessed by the State tax commission, and who may not be experts in the field of Federal court practice.

Perhaps it should be emphasized at this point that the bill does not take away any equitable right of a taxpayer, or deprive him of a day in court. Specific provision is made that the suit will be taken out of the jurisdiction of the Federal court only if a plain, speedy, and efficient remedy may be had at law or in equity in the courts of the State. Thus a full hearing and judicial determination of the controversy is assured.

At present the foreign corporation has a choice of going into two tribunals. The advantage thus given is illustrated by the following quotation from the report of the Committee on the Judiciary on the Johnson Act:

Indeed, the utility company may pursue these two remedies concurrently. The Supreme Court of the United States had held that State and Federal courts have concurrent jurisdiction in such cases and a utility company can proceed in both State and Federal courts until a final judgment is rendered in one of the two proceedings. This gives the utility an opportunity, as the case progresses, to ascertain the views of the State authorities and the Federal authorities and, when it once ascertains these views, and finds it will probably be defeated in one of the proceedings, it can dismiss the case in that proceeding and rely upon the other. It seems quite plain that to give the utility this advantage is unreasonable and unfair. It is likewise exceedingly expensive and always means long delay. All the expenses in the end must be borne by the people who pay the rates to the public utility company. It all comes out of the ultimate consumer.

The following quotations from the same report are also thought to be applicable to this bill in the same manner that they were applicable to the Johnson bill:

LITIGATION IN FEDERAL COURTS MORE EXPENSIVE THAN IN STATE COURTS

It is much more expensive to litigate in Federal courts than in State courts. Attorney fees are usually higher, and the other expenses connected with the litigation are, as a rule, many times higher in Federal court than in the State court. The wealthy individual or corporation is thus often enabled to wear out his opponent and compel him to settle or submit to an unjust judgment for the very reason that his opponent is not financially able to follow him through the tortuous and expensive route through the Federal court to the Supreme Court of the United States at

Washington. And all the time in this dispute there is no Federal question involved. There is a dispute arising under a State statute or law of other origin and nothing more. There are many places in the United States where litigants must travel several hundred miles to attend the place of trial if they are sued in Federal court.

It is not argued that the Federal court will be unjust. For the purpose of our illustration we can assume that the Federal court will be just as fair and as just as the State court. But when sued in a Federal court, the defendant will be required to take his attorneys and his witnesses long distances where the Federal court sits. If the case is continued, they must come again. And when the case is finally decided, the poor defendant may be successful, but his opponent, because he is a nonresident, has taken him into Federal court and he appeals the case to the Federal court of appeals. Then he must send his attorneys several hundred miles to the place where the Federal court of appeals sits. This means again a very much increased expense and, in almost every case, a much larger attorney fee. He may win his case in the court of appeals, but, if so, his opponent may possibly take the case to the Supreme Court of the United States and he will have to send his attorneys perhaps a thousand or 2,000 miles, paying the expenses and again a much larger attorney fee than he would pay in the State courts.

It means, therefore, that a person taken against his will into the Federal court for the purpose of settling a State question is worn out before he reaches the end. He is financially unable to follow the case to the end. Therefore, at the beginning, he perhaps submits to an injustice because he knows it means financial ruin to pursue the case to its final determination.

It is easy to be seen, therefore, that while perhaps there was some basis for this kind of a law when our Constitution was adopted, the purpose for which this provision of law is now used was never dreamed of by our forefathers when they adopted the Constitution. The effect of this provision of law is now entirely different from what it was then. First adopted to bring about justice, it has, as a matter of practice, very largely resulted in injustice and discrimination. Originally intended for the protection of the nonresident, it has become a weapon of destruction and injustice in his hands.

Those who favor the continuance of this unjust discrimination base their reason upon the original claim of jealousies existing between citizens of different States. But the real reason is that they want to protect the "privilege" which this law gives them. They desire to have the right in their litigation to choose between two tribunals. What was originally intended to protect them in a right has become a "privilege" which they use to give them an advantage over their adversaries.

RELIEF OF FEDERAL COURTS FROM CONGESTION

The congestion in our Federal district courts is acknowledged by all. That of itself is often a denial of justice. All classes of our citizens have recently become interested in various proposals for the relief of the congestion in our Federal district courts. The President of the United States has sent official messages to Congress on the subject. He has appointed a commission composed of eminent jurists and other able, patriotic scholars. The question has received the attention of the leading members of the bar throughout the entire country. Federal judges from the Supreme Court down have lent their assistance in trying to devise some plan by which the Federal courts can be relieved from a large amount of the work now upon Federal judicial dockets.

Why not do this by letting State courts settle State controversies and confine Federal courts to the settlement of Federal questions? When a State question arises under a State statute, why not let the courts of that State settle that controversy, whether the controversy is between citizens of one State or citizens of two different States? Why not be logical and let the State courts try controversies arising under State laws within their borders instead of permitting a few privileged persons who do business in a State to take their controversies into Federal courts and thus burden Federal judges with the settlement of State questions and the control of lawsuits arising entirely and solely out of controversies under State laws?

CONSTITUTIONALITY OF PROPOSED LEGISLATION

While there are many other parts of the committee's report on the Johnson Act which are well worth rereading in connection with the consideration of the proposed legislation, there is presented here only one additional quotation, which deals with the constitutional power of the Congress to enact legislation of this type:

The object of the legislation, as it has been distinctly stated, is to take away jurisdiction from the district courts of the United States. It is not intended to take away and does not take away any jurisdiction of the Supreme Court of the United States. The Supreme Court is the only court where jurisdiction is conferred by the Constitution. All the inferior courts—which means all the courts of the United States except the Supreme Court—obtain their jurisdiction from statute. It would be perfectly constitutional for Congress to pass an act which would abolish every Federal court in existence except the Supreme Court. All the jurisdiction which such inferior courts have has been conferred upon them by statute, and the Supreme Court of the United States has repeatedly held that it is within the power of Congress to add to that jurisdiction within the limits of the Constitution, and to take away any part or all of it.

In the case of *Kline* v. *Burke Construction Co.* (260 U. S. 226 (1922)) the Supreme Court said:

"The right of a litigant to maintain an action in the Federal court on the ground that there is a controversy between citizens of different States is not one derived from the Constitution of the United States, unless in a very indirect sense. Certainly it is not a right granted by the Constitution. The applicable provisions, so far as necessary to be quoted here, are contained in article III. Section 1 of that article provides: 'The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.' By section 2 of the same article it is provided that the judicial power shall extend to certain designated cases and controversies, and, among them 'to controversies * * * between citizens of different States * * *.' The effect of these provisions is not to vest jurisdiction in the inferior courts over the designated cases and controversies, but to delimit those in respect of which Congress may confer jurisdiction upon such courts as it creates. Only the jurisdiction of the Supreme Court is derived directly from the Constitution. Every other court created by the General Government derives its jurisdiction wholly from the authority of Congress. That body may give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution."

This question was passed upon directly by the Supreme Court in an early day. In *Turner* v. *Bank of America* (4 Dall. 8, 10 (U. S. 1799)) the Supreme Court, speaking through Mr. Justice Chase, said:

"The notion has frequently been entertained that the Federal courts derived their judicial power immediately from the Constitution; but the political truth is, that the disposal of the judicial power (except in a few specified instances) belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound, and it would, perhaps, be inexpedient, to enlarge the jurisdiction of the Federal courts to every subject, in every form, which the Constitution might warrant."

It is perfectly clear that this bill cannot be successfully attacked on constitutional grounds. Congress, in legislating on that subject, has always acted on that theory.

Since the Johnson Act was passed, its constitutionality has been upheld in an opinion by a United States district court in Mississippi, which reviewed at length the constitutional basis for such legislation in the case of *Mississippi Power & Light Co.* v. *City of Jackson* (9 Fed. Supp. 564).

Mr. President, in conclusion I desire to ask of my brethren a careful consideration of this particular bill, not because it affects my State only, but because the problem raised by reason of the holding that litigants have a right to go into the Federal court and seek relief against the imposition of taxes, as in the State of Washington, is one that confronts every State in the Union. It is a problem which is challenging to every State in the Union which has tax problems confronting it.

I sincerely hope that the Committee on the Judiciary of the Senate will see fit to report this bill promptly. I think my friend the Senator from Nebraska [Mr. NORRIS] wrote a portion of the committee's report from which I have quoted.

EXECUTIVE SESSION

Mr. ROBINSON. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES

The PRESIDING OFFICER (Mr. BROWN of Michigan in the chair) laid before the Senate a message from the President of the United States, submitting the nomination of Murray W. Latimer, of New York, to be a member of the Social Security Board for the remainder of the term expiring August 13, 1941, vice John G. Winant, which was referred to the Committee on Finance; and also a message withdrawing the nomination of John G. Winant, of New Hampshire, to be a member of the Social Security Board for the remainder of the term expiring August 13, 1941 (which was sent to the Senate Jan. 8, 1937), which was ordered to lie on the table.

EXECUTIVE REPORTS OF COMMITTEES

Mr. MCKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters.

He also, from the Committee on Appropriations, reported favorably the nomination of David R. Kennicott, of Illinois, to be State director of the Public Works Administration in Illinois.

ADDENDUM C

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75TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 1503

SUITS RELATING TO COLLECTION OF STATE TAXES

AUGUST 11, 1937.—Referred to the House Calendar and ordered to be printed

Mr. HILL of Oklahoma, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1551]

The Committee on the Judiciary, to whom was referred the bill (S. 1551) to amend section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes, after consideration, report the same favorably to the House with the recommendation that the bill do pass.

The effect of this proposed legislation is to deny jurisdiction to United States district courts to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by, or pursuant to, the laws of any State where a plain, speedy, and efficient remedy may be had in the State courts of the State levying the tax.

The committee attach hereto and make a part of this report the report of the Senate Judiciary Committee on the bill.

[S. Rept. No. 1035, 75th Cong., 1st sess.]

The Committee on the Judiciary, to whom was referred the bill (S. 1515) to amend section 24 of the Judicial Code, after consideration thereof, report the bill favorably to the Senate with the recommendation that it do pass.

S. 1551 amends section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes. The bill reads as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: 'Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State.'

"SEC. 2. The provisions of this Act shall not affect suits commenced in the district courts, either originally or by removal, prior to its passage; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed."

This legislation does not introduce a new principle, since the Congress has passed statutes of similar import. It is the common practice for statutes of various States to forbid actions in State courts to enjoin the collection of State and county taxes unless the tax law is invalid or the property is exempt from taxation, and these statutes generally provide that taxpayers may contest taxes only in refund actions after payment under protest. This type of State legislation makes it possible for the States and their various agencies to secure while long-drawn-out tax litigation is in progress. If those to whom the Federal courts are open may secure injunctive relief against the collection of taxes, a highly unfair picture is presented of the citizen of the State being required pay first and then litigate, while those privileged to sue in the Federal courts only pay what they choose and withhold the balance during the period of litigation.

The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy.

The attorney general of each of the following States has seen fit to urge the passage of this bill: Alabama, California, Florida, Idaho, Illinois, Louisiana, Minnesota, Missouri, Montana, New Jersey, Oklahoma, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wyoming.

It should be emphasized that the bill does not take away any equitable right of the taxpayer or deprive him of his day in court. Specific provision is made that the suit will not be withdrawn from the jurisdiction of the Federal district courts except where there is a plain, speedy, and efficient remedy at law or in equity in the courts of the State. A full hearing and judicial determination of the controversy is assured. An appeal to the Supreme Court of the United States is available as in other cases.

The propriety of this kind of legislation was fully discussed by the Senate Judiciary Committee when the so-called Johnson Act of May 14, 1934, S. 7[illegible] Public, No. 222, was favorably reported and subsequently passed by the Congress. The report on the Johnson bill pointed out that the continuance of the [illegible] discrimination between citizens of the State and foreign corporations doing business in such State has been the cause of much controversy. The controversy arising out of the use of the injunctive process in State tax cases would be eliminated by the passage of this bill.

The question of the constitutionality of this type of legislation was also discussed in the report on the Johnson bill, which pointed out decisions of the Supreme Court which removed any question of the right of Congress to limit jurisdiction of Federal district courts in matters of this kind. There [illegible] question of the constitutional right of the Congress to enact such legislation. The only remaining question is that of the propriety and wisdom of such legislation. The district courts of the United States derive their jurisdiction wholly from the authority of Congress, as was clearly pointed out in *Kline* v. *Burke Construction Company* (260 U. S. 226 (1922)). In that case the Supreme Court held that Congress might give, withhold, or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. As far back as 1799 the case of *Turner* v. *Bank of America*, Mr. Justice Chase speaking for the Supreme Court, laid at rest any question of the right of Congress to enact this sort of legislation.

Since the Johnson Act was passed, its constitutionality has been upheld in an opinion in the United States District Court of Mississippi, which reviewed at length the constitutional basis for such legislation in the case of *Mississippi Power & Light Company* v. *City of Jackson* (9 Fed. Supp. 564).

A contemplation of the wisdom and desirability of this sort of legislation, arising out of the compelling needs of many States for a more prompt disposition of tax controversies of the character referred to, impells us to recommend the prompt passage of S. 1551.

The committee also attaches hereto and makes a part of this report a brief submitted with reference to the proposed legislation as follows:

LEGAL BRIEF ON S. 1551

You ask for some assistance on the question of whether the existence of an adequate remedy at law or in equity in the State courts, such as a tax-refund

action, would prevent a foreign corporation pursuing the same remedy in the Federal court. In answer, will say that there might be circumstances under which the Federal courts would have no jurisdiction of such actions; for instance, where the refund action could be brought only against the State, or against the State officers under such circumstances as to amount to a suit against the State. Under the eleventh amendment to the Federal Constitution, of course, suits against the State, or suits which are in effect suits against the State, are not maintainable in the Federal courts.

But if the refund action is permitted by State legislation or rules of decision against counties or county officers, and the money refunded has not yet reached the State exchequer, such actions, if maintainable in the State courts, could likewise be pursued in the Federal courts if the requisite elements of Federal jurisdiction existed.

Rights created and remedies provided by the statutes of States to be pursued in the State courts may be administered in the Federal courts, as the nature of the rights and remedies may require, where the citizenship and the amounts involved bring the action within the Constitution and the acts of Congress (*Harrison* v. *Remington Paper Co.* (C. C. A.), 140 Fed. 385, 399 (certiorari denied, 199 U. S. 607); *Platt* v. *Lecocq* (C. C. A.), 158 Fed. 723, 727; *Darragh* v. *H. Wetter Mfg. Co.* (C. C. A.), 78 Fed. 7; *Kessler* v. *Williams Necker, Inc.* (D. C.), 258 Fed. 654; *Ex parte McNeil*, 13 Wall. 236; *O'Callaghan* v. *O'Brien*, 199 U. S. 89).

The right under State law to recover illegal taxes may be enforced in Federal court if jurisdictional elements exist (*Southern Ry. Co.* v. *Query* (D. C.), 21 Fed. (2d) 333, 339).

In *Singer Sewing Machine Co.* v. *Benedict* (229 U. S. 481, 486), the Court said as to a Colorado statute giving to one who should pay illegal taxes a right to recover back from the county the money so paid:

"This right was one which could be enforced by an action at law in the circuit court, no less than in the State courts, if the elements of Federal jurisdiction, such as diverse citizenship and the requisite amount in controversy, were present (*ex parte McNeil*, 13 Wall. 236, 243; *United States Mining Co.* v. *Lawson*, 134 Fed. Rep. 769, 771)."

And in *C., B. & Q. R. R.* v. *Osborne* (265 U. S. 14, 16) it was said:

"If an action to recover the payment were allowed the suit might be brought in the courts of the United States, under the usual conditions, as well as in those of the State (*Singer Sewing Machine Co.* v. *Benedict*, 229 U. S. 481, 486)."

And again in *City Bank Co.* v. *Schnader* (291 U. S. 24, 28):

"It is conceded that neither the statutes of Pennsylvania nor the decisions of its courts permit an action at law for the recovery of a tax paid under protest. If that procedure were permissible in the State courts, the appellant could pursue the same remedy in a Federal court, there being the requisite diversity of citizenship and amount in controversy (*Matthews* v. *Rodgers*, 284 U. S. 521)."

In general, the Federal courts, when their jurisdiction is properly invoked, enforce State laws precisely as do the State courts under similar circumstances. For the time being and for the particular case in hand, they function as if sitting in the place of the local court. This is the true theory of the Constitution and of the Federal laws. The aim of the Government is to provide impartial tribunals to which certain classes of litigants may with confidence resort, and where they may have a complete remedy. They are not to lose any rights by going into a Federal court. If they have rights, whether founded on State laws or otherwise, those rights are to be protected and enforced in the court of their choice (*Grover* v. *Merritt Development Co.* (D. C.), 7 Fed. (2d) 917, and numerous examples cited).

As before stated, there are circumstances under which a foreign corporation, with an adequate remedy in the State courts, could not pursue the same remedy in the Federal court, the most common example being cases which would be, in effect, actions against the State.

This is the situation which would be particularly remedied by S. 1551, for if seeking equitable relief in the Federal courts, foreign corporations commonly urge as a ground of equitable jurisdiction in the Federal courts that the refund suit or action provided by State law cannot be pursued in the Federal court because such action would be, in effect, an action against the State not maintainable in the Federal courts. (See *Southern Ry. Co.* v. *Query* (*D. C.*), 21 Fed. (2d) 333.)

But it must be remembered that in such cases, in the event of an adverse decision of the State court, an appeal lies to the United States Supreme Court so that the contestant may ultimately have his constitutional rights determined by the highest Federal court, even though he may not have access in the first instance to the United States district courts (sec. 237 (a), Judicial Code (U. S. C., Ann., title 28, sec. 344)).

In this connection the following is quoted from *Matthews* v. *Rodgers* (284 U.S. 521, 525–526):

"Whenever the question has been presented, this Court has uniformly held that the mere illegality or unconstitutionality of a State or municipal tax is not in itself a ground for equitable relief in the courts of the United States. If the remedy at law is plain, adequate, and complete, the aggrieved party is left to that remedy in the State courts, from which the cause may be brought to this Court for review if any Federal question be involved (Judicial Code, sec. 237, U. S. C., title 28, sec. 344), or to his suit at law in the Federal courts if the essential elements of Federal jurisdiction are present" (citing numerous authorities).

In compliance with clause 2a of rule XIII, existing law is printed below in roman with new matter proposed to be added printed in italic:

Judicial Code, section 24, amended, paragraph 1 (U. S. C., title 28, sec. 41)

The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000 and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens or subjects. No district court shall have cognizance of any suit (except upon foreign bills of exchange) to recover upon any promissory note or other chose in action in favor of any assignee, or of any subsequent holder if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made. The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of this section. Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the enforcement, operation, or execution of any order of an administrative board or commission of a State, or any rate-making body of any political subdivision thereof, or to enjoin, suspend, or restrain any action in compliance with any such order, where jurisdiction is based solely upon the ground of diversity of citizenship, or the repugnance of such order to the Constitution of the United States, where such order (1) affects rates chargeable by a public utility, (2) does not interfere with interstate commerce, and (3) has been made after reasonable notice and hearing, and where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State. *Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State.*

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Calendar No. 1074

75TH CONGRESS, 1st Session | SENATE | REPORT No. 1035

AMENDING THE JUDICIAL CODE

JULY 22 (calendar day, AUG. 2), 1937.—Ordered to be printed.

Mr. CONNALLY, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1551]

The Committee on the Judiciary, to whom was referred the bill (S. 1551) to amend section 24 of the Judicial Code, after consideration thereof, report the bill favorably to the Senate with the recommendation that it do pass.

S. 1551 amends section 24 of the Judicial Code, as amended, with respect to the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes. The bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first paragraph of section 24 of the Judicial Code, as amended, is amended by adding at the end thereof the following: "Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State where a plain, speedy, and efficient remedy may be had at law or in equity in the courts of such State."

SEC. 2. The provisions of this Act shall not affect suits commenced in the district courts, either originally or by removal, prior to its pasasge; and all such suits shall be continued, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed.

This legislation does not introduce a new principle, since the Congress has passed statutes of similar import. It is the common practice for statutes of the various States to forbid actions in State courts to enjoin the collection of State and county taxes unless the tax law is invalid or the property is exempt from taxation, and these statutes generally provide that taxpayers may contest their taxes only in refund actions after payment under protest. This type of State legislation makes it possible for the States and their various agencies to survive while long-drawn-out tax litigation is in progress. If those to whom the Federal courts are open may secure injunctive relief

against the collection of taxes, the highly unfair picture is presented of the citizen of the State being required to pay first and then litigate, while those privileged to sue in the Federal courts need only pay what they choose and withhold the balance during the period of litigation.

The existing practice of the Federal courts in entertaining tax-injunction suits against State officers makes it possible for foreign corporations doing business in such States to withhold from them and their governmental subdivisions, taxes in such vast amounts and for such long periods of time as to seriously disrupt State and county finances. The pressing needs of these States for this tax money is so great that in many instances they have been compelled to compromise these suits, as a result of which substantial portions of the tax have been lost to the States without a judicial examination into the real merits of the controversy.

The attorney general of each of the following States has seen fit to urge passage of this bill: Alabama, California, Florida, Idaho, Illinois, Louisiana, Minnesota, Missouri, Montana, New Jersey, Oklahoma, South Dakota, Vermont, Virginia, Washington, West Virginia, and Wyoming.

It should be emphasized that the bill does not take away any equitable right of the taxpayer or deprive him of his day in court. Specific provision is made that the suit will not be withdrawn from the jurisdiction of the Federal district court except where there is a plain, speedy, and efficient remedy at law or in equity in the courts of the State. A full hearing and judicial determination of the controversy is assured. An appeal to the Supreme Court of the United States is available as in other cases.

The propriety of this kind of legislation was fully discussed by the Senate Judiciary Committee when the so-called Johnson Act of May 14, 1934, S. 752, Public, No. 222, was favorably reported and subsequently passed by the Congress.

The report on the Johnson bill pointed out that the continuance of the unjust discrimination between citizens of the State and foreign corporations doing business in such State has been the cause of much controversy. The controversies arising out of the use of the injunctive process in State tax cases would be eliminated by the passage of this bill.

The question of the constitutionality of this type of legislation was also discussed in the report on the Johnson bill, which pointed out decisions of the Supreme Court which removed any question of the right of Congress to limit jurisdiction of Federal district courts in matters of this kind. There being no question of the constitutional right of the Congress to enact such legislation, the only remaining question is that of the propriety and wisdom of such legislation. The district courts of the United States derive their jurisdiction wholly from the authority of Congress, as was clearly pointed out in *Kline* v. *Burke Construction Company* (260 U. S. 226 (1922)). In that case the Supreme Court held that Congress might give, withhold or restrict such jurisdiction at its discretion, provided it be not extended beyond the boundaries fixed by the Constitution. As far back as 1799 the case of *Turner* v. *Bank of America*, Mr. Justice Chase, speaking for the Supreme Court, laid at rest any question of the right of Congress to enact this sort of legislation.

Since the Johnson Act was passed its constitutionality has been upheld in an opinion in the United States District Court of Mississippi, which reviewed at length the constitutional basis for such legislation in the case of *Mississippi Power & Light Company* v. *City of Jackson* (9 Fed. Supp. 564).

A contemplation of the wisdom and desirability of this sort of legislation rising out of the compelling needs of many States for a more prompt disposition of tax controversies of the character referred to, impels us to recommend the prompt passage of S. 1551.

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IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

JEROME J. WELLS, EDWARD A. SWEETSER, FRANCES M. BARBEAU, WALTER HOLMES, CONRAD MOORE, DAVID N. O'CONNELL, LAURA MAY NOYES, RONALD MILES MAGONI, SHIRLEY A. MARSH, ROBERT LEE BOOTH, RAYMOND CHESTER LUCAS, JR., Appellants	)	DOCKET NO. 74-2067
vs.	)	
JAMES E. MALLOY, Commissioner of Motor Vehicles of the State of Vermont, Appellee	)	

CERTIFICATE OF SERVICE

NOW COMES Roger E. Kohn, Esquire, counsel for appellant Jerome J. Wells, and certifies that two copies of appellants' brief and one copy of appendix of appellants were sent by first class mail, postage prepaid, to Richard M. Finn, Esquire, Assistant Attorney General, counsel for appellee, at his last known office address, at the Office of Attorney General, Pavilion Office Building, Montpelier, Vermont 05602, on this 21ST day of October, 1974.

Roger E. Kohn

ROGER E. KOHN
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